

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2008

No. 07-10926
Conference Calendar

Charles R. Fulbruge III
Clerk

FREDERICK DEWAYNE MALONE

Plaintiff-Appellant

v.

DR ALAN BYRD

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:07-CV-488

Before PRADO, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Frederick Dewayne Malone, Texas prisoner # 0699305, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. Malone argues that the defendant demonstrated deliberate indifference to his serious medical needs because the defendant treated his skin condition with only a shot and one bar of soap. Malone alleges that he should have also received lotion and dandruff shampoo.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Malone fails to allege facts to support a claim of deliberate indifference to a serious medical need as is required in order to proceed under the Eighth Amendment and § 1983. See *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991). Malone's appeal is without arguable merit and thus frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Therefore, it is dismissed as frivolous. See 5TH CIR. R. 42.2. The district court's dismissal of Malone's complaint as frivolous and this court's dismissal of Malone's appeal count as two strikes for purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Malone is cautioned that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.